

Robert J. Grand
DREIER LLP
499 Park Avenue
New York, New York 10022
(212) 328-6100

*Attorneys for Defendants Eugene Kasakove
and Markas Financial Services, Inc.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PHYLIS TANZ,

Plaintiffs,

-against-

EUGENE KASAKOVE and
MARKAS FINANCIAL SERVICES, INC.,

Defendants.

CIVIL ACTION NO.
08-cv-01462-LAK

DECLARATION OF EUGENE KASAKOVE

EUGENE KASAKOVE, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. I am a defendant in this action and the president of defendant, Markus Financial Services, Inc., (collectively, “Defendants”). I respectfully submit this Declaration in support of Defendants’ Motion to Dismiss the Second Amended Complaint (“Complaint”). The purpose of this Declaration is to place before the Court copies of documents that Plaintiff has relied upon in drafting the Complaint and which are thus integral to the Complaint. Plaintiff had possession and knowledge of these documents when the Complaint was drafted.

2. Plaintiff mischaracterizes what she refers to in her Complaint as a \$100,000 investment in a trucking company controlled by me. That “investment” was not in a trucking company, but rather was a loan to a company called The Markas Group, which is a division of defendant MFS. The Markas Group is a factoring business which operated to factor the receivables of a trucking company named Rainbow Transport Services, Inc.

3. In 2001, Plaintiff invested \$100,000 in The Markas Group. Annexed hereto as Exhibit 1 are true and correct copies of three of the four \$25,000 checks made out to The Markas Group from Plaintiff.

4. The loan to The Markas Group was likely one of the better investments that Plaintiff ever made. From 2002 through 2006 Plaintiff earned annual returns on her investment of more than a 20%, 15%, 13%, 13% and 18%, respectively. Annexed hereto as Exhibit 2 are true and correct copies of 1099-INT statements issued to Plaintiff reflecting interest earned from 2002 through 2006 on her investment with The Markas Group.

5. At Plaintiff’s request, on or about July 10, 2003, I sent her a letter confirming her investment in The Markas Group. A true and correct copy of the July 10, 2003 letter is annexed hereto as Exhibit 3.

6. The July 10, 2003 letter states on its face that Plaintiff’s interest income from the \$100,000 investment in The Markas Group was not guranteed.

7. Plaintiff received the return of her \$100,000 principal investment in The Markas Group in 2006. Annexed hereto as Exhibit 4 is a document reflecting the return of the \$100,000 principal investment to Plaintiff.

Dated: May 22, 2008
New York, New York

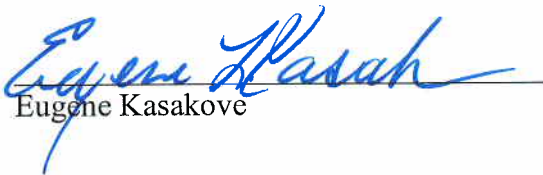

Eugene Kasakove

EXHIBIT 1


PRT

As per your instructions
here is check no (2)
I am hanging in (as per
your instructions)

Hugs,
Phyllis

PHYLLIS ROSOV TANZ		SALOMON SMITH BARNEY Select Client	546
		66-7266/212	
Pay to the Order of	Aug 10 2001 The Markes Group		\$ 25,000 ⁰⁰ / ₁₀₀
Twenty-five thousand and ⁰⁰ / ₁₀₀ — Dollars		Security Features Details on Back	
071 C B O R E	SALOMON SMITH BARNEY FINANCIAL MANAGEMENT ACCOUNT™ Citibank F.S.B. Englewood Cliffs, NJ		
For	Phyllis Rosov Tanz		0546
⑆02⑆272655⑆ ⑆00366207⑆⑆			

PRT

Here it is —
My faith in
you. 
Hugs, Phyllis

PHYLLIS ROISOV TANZ

SALOMON SMITH BARNEY
Select Client

548
55-7265/212

Aug. 15 2001

Pay to the Order of: The Markas Group \$25,000 ⁰⁰/₁₀₀

Twenty-five Thousand and 00/100 — Dollars

071
E D C O C
SALOMON SMITH BARNEY
FINANCIAL MANAGEMENT ACCOUNT™
Citibank F.S.B.
Englewood Cliffs, NJ

Phyllis Rosov Tanz MP

For ⑆021272655⑆ 1003662071⑆ 0548

PHYLLIS ROSOV TANZ

SALOMON SMITH BARNEY
Select Client

551
55-7265/212

Aug. 23, 2001

Pay to the Order of *The Markys Group*

Twenty-five thousand and 00/100

\$ *25,000.00*

071 SALOMON SMITH BARNEY
FINANCIAL MANAGEMENT ACCOUNT™
Citibank P.S.B.
Englewood Cliffs, NJ

Phyllis Rosov Tanz

1:02 1 272655 1003662071 055

PRT

I'm keeping the faith

Hugs

Phyllis

EXHIBIT 2

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no. MARKAS FINANCIAL SERVICES, INC. 167 STEPHENS PARK ROAD HACKETTSTOWN, NJ 07840-5518		Payer's RTN (optional) 1 75	OMB No. 1545-0112 2002 Form 1099-INT	Interest Income
PAYER'S Federal Identification number 22-2451269	RECIPIENT'S Identification number 112-32-8738	1 Interest income not included in box 3 \$ 20,343.10		
RECIPIENT'S name PHYLLIS ROISOV TANZ Street address (including apt. no.) 715 PARK AVENUE 10D City, state, and ZIP code NEW YORK NY 10021-5047 Account number (optional)		2 Early withdrawal penalty \$	3 Interest on U.S. Savings Bonds and Treas. obligations \$	Copy C For Payer For Privacy Act and Paperwork Reduction Act Notice, see the 2002 General Instructions for Forms 1099, 1098, 5498, and W-2G.
		4 Federal income tax withheld \$	5 Investment expenses \$	
		6 Foreign tax paid \$	7 Foreign country or U.S. possession	
		2nd TIN not. <input type="checkbox"/>		
Form 1099-INT				

Department of the Treasury - Internal Revenue Service

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no. MARKAS FINANCIAL SERVICES, INC. 167 STEPHENS PARK ROAD HACKETTSTOWN, NJ 07840-5518		Payer's RTN (optional)	OMB No. 1545-0112 2003 Form 1099-INT	Interest Income Copy C For Payer For Privacy Act and Paperwork Reduction Act Notice, see the 2003 General Instructions for Forms 1099, 1098, 5498, and W-2G.
PAYER'S Federal Identification number 22-2451269	RECIPIENT'S identification number 112-32-8738	1 Interest income not included in box 3 \$ 15,091.76		
RECIPIENT'S name PHYLLIS ROSOV TANZ Street address (including apt. no.) 715 PARK AVENUE 10D City, state, and ZIP code NEW YORK NY 10021-5047		2 Early withdrawal penalty \$	3 Interest on U.S. Savings Bonds and Treas. obligations \$	
Account number (optional)		4 Federal income tax withheld \$	5 Investment expenses \$	
2nd TIN not. <input type="checkbox"/>		6 Foreign tax paid \$	7 Foreign country or U.S. possession	

Form **1099-INT** Department of the Treasury - Internal Revenue Service

Mrs. Phyllis Rosov Tanz
715 Park Avenue Apt 10D
New York, NY 10021-5047

Dear Phyllis:

Enclosed with your Check in the amount of FOUR THOUSAND THREE HUNDRED EIGHTY SEVEN and 48/100 DOLLARS (\$4,387.48) for the period of collections from August 1, through October 31, is an IRS form 1099 for your 2003 taxes showing the total interest paid for the fiscal year.

If you have any questions, please feel free to contact me by any of the means shown above.

Thank you for choosing **THE MARKAS GROUP**, a division of MARKAS FINANCIAL SERVICES, INC. as your source for financial investment.

Sincerely,



Eugene L. Kasakove
President
ELK/es
Encls.

P.S. Enclosed is a check in the amount of \$5,000.00 as a **RETURN OF PRINCIPAL**.

VOID CORRECTED

PAYER'S NAME (Print or type) MARKAS FINANCIAL SERVICES, INC. 167 STEPHENS PARK ROAD HACKETTSTOWN, NJ 07840-5518		PAYER'S TIN (Employer only) 2004		OMB No. 1545-0047 1099-INT	
PAYER'S ADDRESS (Print or type) 122-2451269		1 Interest income not included in box 3 of 1099-INT \$ 13,124.54		Copy C For Payer	
PAYER'S ADDRESS (Print or type) 715 PARK AVENUE NEW YORK, NY 10021-5047		2 Early withdrawal penalty \$		3 Interest on U.S. savings bonds \$	
PAYER'S ADDRESS (Print or type) 715 PARK AVENUE NEW YORK, NY 10021-5047		4 Federal income tax withheld \$		5 Investment expenses \$	
PAYER'S ADDRESS (Print or type) 715 PARK AVENUE NEW YORK, NY 10021-5047		6 Foreign tax paid \$		7 Foreign country or U.S. possession \$	
Account number (optional) 2nd TIN not		\$		Instructions for 1099-INT 1098-5498 and W-2G	

Form 1099-INT

Department of the Treasury - Internal Revenue Service

PAYEE'S NAME (as shown on statement of account) and address MARKAS FINANCIAL SERVICES, INC. 167 STEPHENS PARK ROAD HACKENSACK, NJ 07840-5518		PAYEE'S TAX IDENTIFICATION No. (Do not enter if individual)		PAYEE'S SOCIAL SECURITY No. (Do not enter if individual)	
PAYEE'S EIN (if applicable) 22-2451269		PAYEE'S IDENTIFICATION No. 112-312137219		2005 Interest Income Form 1099-INT	
PAYEE'S NAME (as shown on statement of account) and address PRILLIS ROSOV TANZ 715 PARK AVENUE # 10D NEW YORK, NY 10021-5047		1 Interest income not included in box 3 \$ 13,761.56		2 Tax withheld \$	
3 Federal income tax withheld \$		4 State income tax withheld \$		5 Investment expenses \$	
6 Foreign tax paid \$		7 Foreign country or U.S. possession		8	
9		10		11	

Form 1099-INT

Department of the Treasury - Internal Revenue Service

Copy ©
For Payor
For Broker/Agent
For Recipient
Notice: See the
2005 General
Instructions for
Forms 1099-
1099-INT and
1099-DIV

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		Payer's RTN (optional)		OMB No. 1545-0112	
MARKAS FINANCIAL SERVICES, INC. 167 STEPHENS PARK ROAD HACKETTSTOWN, NJ 07840-5518		1 Interest income		2006 Interest Income Form 1099-INT	
		\$ 18,297.81			
		2 Early withdrawal penalty			
PAYER'S federal identification number		RECIPIENT'S identification number		3 Interest on U.S. Savings Bonds and Treas. obligations	
22-2451269		112-32-8738		\$	
RECIPIENT'S name		4 Federal income tax withheld		5 Investment expenses	
PHYLLIS ROSE TANZ Street address (including apt. no.) 715 PARK AVENUE 10D City, state, and ZIP code NEW YORK NY 10021-5047		\$		\$	
		6 Foreign tax paid		7 Foreign country or U.S. possession	
		\$		\$	
Account number (see instructions)		8 Tax-exempt interest		9 Specified private activity bond interest	
		\$		\$	
2nd TIN not <input type="checkbox"/>					

**Copy C
For Payer**

For Privacy Act
and Paperwork
Reduction Act
Notice, see the
**2006 General
Instructions for
Forms 1099,
1098, 5498,
and W-2G.**

Form **1099-INT**

Department of the Treasury - Internal Revenue Service

EXHIBIT 3

THE MARKAS GROUP

167 STEPHENS PARK ROAD

HACKETTSTOWN, NJ 07840

TEL: (908) 850-3820 FAX: (908) 850-9455

July 10, 2003

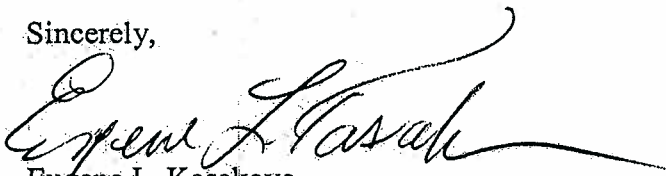
Mrs. Phyllis R. Tanz
715 Park Avenue Apt 10D
New York City, NJ 10021-5047

Dear Phyllis:

In further reference to our conversation of the other day, this will confirm your investment with THE MARKAS GROUP, a Division of MARKAS FINANCIAL SERVICES, INC in the amount of ONE HUNDRED THOUSAND and NO/ 100 DOLLARS (\$100,000.00). This letter and my signature thereon, will also serve to Guarantee your investment, as to principal. I cannot guarantee the income on your investment.

Should something happen to me; this letter will serve to advise the Executor of my Estate of the obligation, upon presentation of this letter to immediately return your invested funds, should no evidence exist that said funds were already returned.

Sincerely,

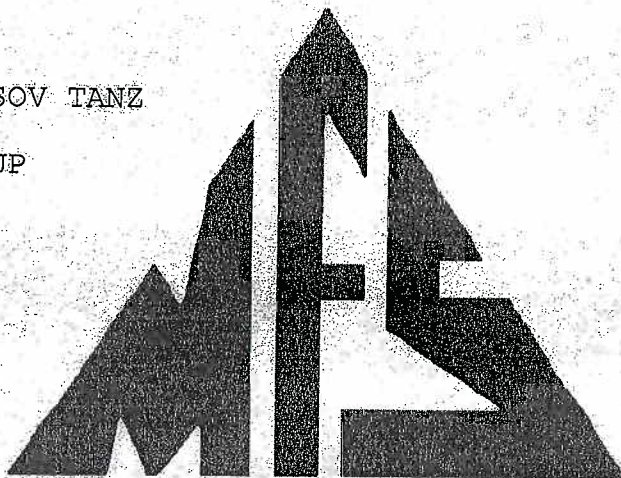


Eugene L. Kasakove
President and Individually

EXHIBIT 4

1267

Date: 12/04/2006
Payee: INV-PHYLLIS ROSOV TANZ
Amount: \$100,000.00
Account: THE MARKAS GROUP
Acct #: 7856345710



Memo: Principal Investment-Refunded in full

THE MARKAS GROUP

1267

Date: 12/04/2006
Payee: INV-PHYLLIS ROSOV TANZ
Amount: \$100,000.00
Account: THE MARKAS GROUP
Acct #: 7856345710



Memo: Principal Investment-Refunded in full